

September 28, 2005

Daniel J. McHugh
City Attorney
City of Redlands
[Address Redacted]
Redlands, CA 92373-1505

**Re: Your Request for Advice
Our File No. A-05-144**

Dear Mr. McHugh:

This letter is in response to your request on behalf of Planning Commissioner Caroline Laymon, the City of Redlands for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

This letter is solely based on the facts presented to us in your letter requesting advice. The Commission does not act as a finder of fact when issuing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our advice is applicable only to the extent that the facts provided to us are correct, and all of the material facts have been provided.

QUESTIONS

1. May Commissioner Laymon participate in the planning commission's consideration (and ultimately the city council's consideration) of amendments to the City's Airport Master Plan and Airport Land use Compatibility Plan ("ALUCP") which would update both plans' goals, policies and regulations, and potentially redesignate the geographical boundaries of the "B-1" "B-2" and "C" land use compatibility zones which surround the airport.

2. May Commissioner Laymon participate in the planning commission's consideration (and ultimately the city council's consideration) of applications for zone changes and subdivisions by owners of properties near the airport which are subject to regulation by the ALUCP. These properties are located within a radius of 1,000 feet from the airport's boundaries.

¹ Government Code §§ 81000 – 91014. Commission regulations appear at Title 2, §§ 18109-18997, of the California Code of Regulations.

CONCLUSIONS

1 and 2. So long as the financial effect of the decision on the commissioner's personal finances is less than \$250 in a 12-month period, the commissioner will not have a conflict of interest. We do not have sufficient information about these decisions to determine if they will have any financial effect on the market value of the hanger or the rent that the commissioner pays to the landlord.

FACTS

The City of Redlands is a General Law city, and the City owns and operates a municipal airport. As part of those operations the City, on occasion, leases property at the airport for the construction of privately-owned airplane hangers. These privately-owned hangers may later be individually sold. Commissioner Laymon is an owner (in joint tenancy with her spouse) of one of the hangars.

The approximate purchase price paid by Commissioner Laymon for her hanger was \$28,000. Based upon recent market sales, Commissioner Laymon estimates the value of her hanger today at approximately \$40,000 - \$42,000 dollars. In addition to owning the hanger, Commissioner Layman pays her landlord (the lessee of the City who originally constructed the hangar) approximately \$23.55 per month for utilities and other services associated with her month-to-month sublease of the airport property on which the hanger is located.

Planning Commissioner Laymon would like to know whether she has a potential conflict of interest that would prohibit her from influencing, deliberating on, or participating in the Planning Commission's consideration (and ultimately the city council's consideration) of amendments to the City's Airport Master Plan and Airport Land use Compatibility Plan ("ALUCP") which would update both plans' goals, policies and regulations, and potentially redesignate the geographical boundaries of the "B-1" "B-2" and "C" land use compatibility zones which surround the airport. The Master Plan is a stand-alone city document that establishes a plan for development of the airport. The ALUCP is adopted pursuant to California Public Utility Code § 21670 et seq., and is incorporated into the City's General Plan and thus serves as the City's "constitution" for development of, and around, the airport.

Commissioner Laymon would also like to know whether she has a potential conflict of interest that would prohibit her from influencing, deliberating on, or participating in the Planning Commission's consideration (and ultimately the city council's consideration) of applications for zone changes and subdivisions by owners of properties near the airport which are subject to regulations by the ALUCP. These properties are located within a radius of 1,000 feet from the airport's boundaries.

In our telephone conversation of August 9, 2005, you confirmed that while the commissioner owns the hanger structure, the city owns the real property on which the hanger is constructed. You noted that the property was leased to the person that built the hanger. And that person sold the hanger structure to the commissioner and subleased the land to the commissioner on a month-to-month basis. The commissioner pays a rental payment as well as a payment for utilities and other services.

ANALYSIS

The conflict-of-interest provisions of the Act are intended to ensure that public officials “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (§ 81001, subd. (b).) To that end, § 87100 specifically prohibits any public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. A public official has a “financial interest” in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s economic interests. (§ 87103; Reg. 18700, subd. (a).) The Commission has adopted a standard eight-step analysis for determining whether an individual has a disqualifying conflict of interest in a given governmental decision. (Reg. 18700, subd. (b)(1)-(8).) This letter applies the eight-step analysis to the facts that you have presented to us, and renders advice based on the results of that analysis.

Step One: Is Commissioner Laymon a “public official?”

The term “public official” is defined by § 82048 of the Act, as follows:

“‘Public official’ means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government.”

As a planning commissioner in Redlands, Ms. Laymon is a public official under the Act.

Step Two: Will Commissioner Laymon be making, participating in making, or influencing a governmental decision?

Regulation 18702.1, subdivision (a) defines what is meant by “making a governmental decision,” including voting on a matter, appointing a person, obligating or committing one’s agency to a course of action, entering into a contract or agreement on behalf of one’s agency, and determining not to act upon a matter by doing any of those things. Regulation 18702.2 defines what is meant by “participating in making a governmental decision.” Included in that definition is preparing or presenting any report,

analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official, and the purpose of which is to influence a governmental decision.²

You stated the commissioner wishes to participate in the decisions of the planning commission.

Step Three: What are Commissioner Laymon's economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. A public official has an economic interest in:

- A business entity in which he or she has a direct or indirect investment of \$2,000 or more (§ 87103(a); reg. 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee or holds any position of management (§ 87103(d); reg. 18703.1(b));
- Real property in which he or she has a direct or indirect interest of \$2,000 or more (§ 87103(b); reg. 18703.2);
- Any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (§ 87103(c); reg. 18703.3);
- Any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (§ 87103(e); reg. 18703.4);
- His or her personal finances, including those of his or her immediate family this is the "personal financial effects" rule. (§ 87103; reg. 18703.5.)

The only potential economic interest you have identified in your request for advice is the Commissioner's ownership interest in the hanger and her month-to-month tenancy interest in the hangar property at the airport. Commissioner Layman pays her landlord for her sublease, utilities, and other services associated with a month-to-month sublease of the airport property on which the hanger is located. Under the Act, an interest in real property is recognized as an economic interest. (§ 87103, subd. (b); Reg. 18703.2). An interest in real property includes a leasehold interest in real property within the official's jurisdiction. (§ 82033.) However, the terms "interest in real property" and "leasehold interest," as used in the Act, do not include the interest of a tenant in a periodic tenancy of one month or less. (Reg. 18233.) Accordingly, the hangar property

² If a public official's office is listed in section 87200 ("87200 filers" include members of planning commissions) and he or she has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b)(1)(B), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

that you rent is not considered an economic interest in real property for the purposes of this analysis.

Nonetheless, even though the hangar property does not constitute an economic interest under your facts for purposes of the Act, a public official always has an economic interest in his or her *personal finances*, including the official's personal expenses, income, assets, or liabilities (§ 87103; Reg. 18703.5). As noted above, Commissioner Layman pays rent, utility costs and other services associated with her month to month sublease of the airport property on which the hangar is located. This is a personal expense. In addition, Commissioner Laymon is an owner (in joint tenancy with her spouse) of the hangar itself. This constitutes an asset of the commissioner.

Steps Four, Five, and Six: Is Commissioner Laymon's economic interest in her personal finances directly or indirectly involved in the decision? What is the standard for determining if an effect of the decision on Commissioner Laymon's economic interest in her personal finances is material? Is it reasonably foreseeable that the decision would affect Commissioner Laymon's personal finances by \$250 or more in a 12-month period?

The next steps in the analysis are to determine whether the economic interests identified will be involved directly or indirectly in any decisions the commissioner may participate in making. The answer to this question determines the standard used to determine the materiality standard applicable to the commissioner's economic interests, as established by regulations 18705 et seq. After determining the level of economic effect considered to be "material" for each economic interest, a public official must then decide whether it is "reasonably foreseeable" that the effect of a given decision on a given economic interest will be "material." (Reg. 18700(b)(6).)

- In order to determine if the reasonably foreseeable financial effect of the decision on the commissioner's personal finances is material, the commissioner must first determine if his or her personal finances are directly or indirectly involved in the decision. (Reg. 18704, subd. (a).) Regulation 18704.5 states that personal finances are deemed to be directly involved in a governmental decision if the decision has *any* financial effect on the commissioner's personal finances.
- Once the degree that the commissioner's economic interest would be involved has been determined, step 5 of the analysis addresses the applicable materiality standard. Regulation 18705.5 declares that for the financial effect of a decision on an official's directly involved personal finances to be material, the effect must be \$250 or more in a 12-month period.
- Finally, an effect is considered "reasonably foreseeable" if the effect is "substantially likely." (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

You have asked about two decisions, consideration of: (1) amendments to the City's Airport Master Plan and Airport Land Use Compatibility Plan ("ALUCP") and (2) individual applications for zone changes and subdivisions by owners of properties near the airport which are subject to regulations by the ALUCP. These properties are located within a radius of 1,000 feet from the airport's boundaries. However, we do not have sufficient information about these decisions to determine if they will have any financial effect on the market value of the hanger or the rent that the commissioner pays to the landlord. However, so long as the financial effect of the decision on the commissioner's personal finances is less than \$250 in a 12-month period, the commissioner will not have a conflict of interest.

Steps Seven & Eight: Public Generally & Legally Required Participation

An official who otherwise has a conflict of interest in a decision may still participate under the "public generally" exception. This exception applies when the financial effect of a decision on a public official's economic interests is substantially similar to the effect on a significant segment of the public.

Additionally, in certain rare circumstances, a public official may be called upon to take part in a decision despite the fact that the official may have a disqualifying conflict of interest under the "legally required participation" rule. This rule applies only in certain very specific circumstances where the government agency would be paralyzed from acting. Your account of the facts does not provide us with sufficient information to determine whether this exception would apply.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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